

NOTICE

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

BUFFER EXCESS LIABILITY INSURANCE POLICY  
DECLARATIONS

Item 1. **Educational Organization:**

Address:

Item 2. **Limit of Liability:**

(a) \$ Each **Occurrence**  
(b) \$ Annual Aggregate Limit

Item 3. (a) **Policy Period:** / / to / /  
(b) **Inception Date:** / /  
at 12:01 A.M. at the address stated in Item 1 above

Item 4. **Underlying Limit Retention:** \$

Item 5. Premium: \$

Item 6. **EBL Date of First Coverage:** / /

Item 7. Representative of **Educational Organization:**

Item 8. Applicable Initial Endorsements:

Item 9. Applicable Initial Schedules:

**BROKER COMMISSION DISCLOSURE**

As a member owned company, United Educators believes it is important to provide its policyholders, whose brokers receive compensation through commissions paid by United Educators, with the amount of those commissions:

Item 10: **Broker Commission:** \$0  
Broker commission in Item 10., if any is included in Item 5., Premium.

This insurance is subject to the provisions, stipulations, conditions and exclusions contained in the policy form as well as other provisions, stipulations, conditions and exclusions as may be endorsed or added thereto (collectively hereinafter referred to as the "Policy").

Issued by: United Educators Insurance, a Reciprocal Risk Retention Group

**SPECIMEN**

Authorized Representative

**United Educators Insurance, a Reciprocal Risk Retention Group  
Buffer Excess Liability Policy  
Occurrence Form**

THIS IS AN **OCCURRENCE** POLICY EXCEPT THAT THE LIMITED EXTENSION OF COVERAGE FOR PROFESSIONAL SERVICES IN PARAGRAPH 11.e. IS PROVIDED ON A "CLAIMS MADE" BASIS.

(The words "**we**," "**us**," and "**our**," when used in this Policy, refer to United Educators Insurance, a Reciprocal Risk Retention Group, the "Company" issuing this Policy of insurance).

In consideration of the payment of the premium, in reliance on the information furnished to **us** in the application and attachments thereto, and subject to the **Limit of Liability**, exclusions, definitions, conditions and other terms of this Policy, **we** agree with the **Educational Organization** that:

**INSURING AGREEMENT**

1. **We** will pay on behalf of the **Insureds** that portion of the **Ultimate Net Loss** which is in excess of the **Underlying Limit Retention** amount up to the **Limit of Liability** of the Policy resulting from an **Occurrence** anywhere to which this insurance applies. This Policy applies excess of any **Underlying Insurance**.

**DEFINITIONS**

2. This Policy is subject to the following definitions:

**Advertising Injury** means injury resulting from

- a. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. oral or written publication of material that violates a person's right of privacy;
- c. misappropriation of advertising ideas or style of doing business; or
- d. infringement of trademark, title, copyright or slogan

in any advertisement, publicity article, broadcast, telecast, or electronic or video publication that arises out of an **Included Entity's** advertising of its goods, products or services.

**Athletic Participant** means an individual who takes part or who took part with the expressed or implied consent of an **Included Entity** in any tryout, conditioning, practice, preparation, scrimmage, exhibition or game which is related to the **Included Entity's** organized athletic programs.

**Athletic Traumatic Brain Injury** means any **Traumatic Brain Injury** to an **Athletic Participant** in connection with, arising out of, relating to or attributable to any tryout, conditioning, practice, preparation, scrimmage, exhibition or game which is related to the **Included Entity's** organized athletic programs.

**Automobile** means a land motor vehicle designed and registered for use on public roads including any attached trailer or equipment. **Automobile** does not mean or include

- a. solar or battery-powered experimental motor vehicles developed in conjunction with an educational program of the **Educational Organization** wherever operated including preparing or practicing for, or participating in, any competition or time trial with other educational organizations; or
- b. motorized land vehicles or equipment principally designed for use off public roads or on an **Included Entity's** property that are neither registered as a motor vehicle nor insured under an automobile liability insurance policy, including tractors, mowers, snow-blowers, grading equipment, farm equipment, forklifts, backhoes, all-terrain vehicles, bulldozers and similar equipment.

**Bodily Injury** means physical or mental injury, emotional distress, sickness, disease, shock, or death sustained by a person. However, **Bodily Injury** does not include any physical or mental injury, emotional distress, sickness, disease, shock, or death related to or arising out of **Sexual Misconduct**.

**Child Molestation** means any actual or alleged illegal or otherwise wrongful sexual conduct with a minor.

**Claim** means a demand for **Damages**.

**Clerical or Administrative Error** means an unintended error or omission in the administration of a **Covered Benefit Plan**, including enrolling or failing to enroll employees; keeping records; interpreting rules, regulations, policies and procedures; and giving advice to employees.

**Computer System** means any computer hardware, software or any components thereof that are or can be linked together through a network of two or more devices accessible through the Internet, internal network or connected with data storage or other peripheral devices (including, without limitation, telephones, wireless and other mobile devices), as well as any cloud computing or other resources operated by a third party service provider.

**Covered Benefit Plan** means any employee benefit plan that is operated by the **Educational Organization** for the benefit of employees of an **Included Entity** and that

- (i) provides health, medical, accident, death or disability benefits provided by, and funded by regular premium payments to, a licensed commercial insurance company, health maintenance organization or preferred provider organization that is not related to, managed by, affiliated with or under the control of any **Insured**; or
- (ii) provides retirement benefits in a qualified 403(b) plan provided by, and funded by periodic payments to, a licensed commercial insurance company (such as TIAA) or a regulated investment company or mutual fund, which company or fund is not related to, managed by, affiliated with or under the control of any **Insured**.

**Damages** means the amounts that an **Insured** becomes legally obligated to pay as compensation to an injured party. **Damages** includes punitive or exemplary damages, where lawfully insurable, and

**Defense Costs**. But **Damages** does not include:

- a. taxes, fines, or criminal penalties;
- b. the cost of compliance with injunctive or equitable relief; or
- c. any matters uninsurable under the law pursuant to which this Policy shall be construed.

**Defense Costs** means the fees and expenses of investigation and defense of **Claims**, and the costs of appeal or similar bonds for amounts up to the **Limit of Liability**, and includes reasonable attorneys' fees and disbursements; but **Defense Costs** does not include the wages or salary of any employee of any **Insured**, any amounts paid by an underlying insurer pursuant to its duty to defend an **Insured** or any fees or expenses of the Claims Administrator pursuant to Paragraph 8 of this Policy.

**Digital Data** means any record, data, research, or information of any kind, including but not limited to **Financial Information, Health Information or Identifying Information**, that is stored on a **Computer System**.

**EBL Date of First Coverage** means the date specified at 12:01 a.m. at the address of the **Educational Organization** stated in Item 6. of the Declarations.

**Educational Organization** means the entity named as such in Item 1 of the Declarations.

**Extended Discovery Period** means the extended period of time, if granted pursuant to Section 28 herein, for reporting **Claims**, during the 36-month period after the end of the **Policy Period** but only for an **Occurrence** taking place within the **Policy Period**.

**Financial Information** means an individual or organization's non-public financial data, regardless of how or where it is stored or what format it is in, including but not limited to credit card numbers, credit ratings, bank account numbers, bank account balances, or any other information that is used in billing, credit assessment, financial aid determinations, business transactions, or other financial activities.

**First Aid** means any uncompensated emergency care or treatment given to an ill or injured person at the scene of an accident before a licensed medical professional can provide regular medical aid. However, **First Aid** shall not mean services provided by an individual (i) in the course of his/her employment as, or training for, a physician, nurse, or other licensed medical professional; or (ii) in the course of volunteer work as a physician, nurse, or other licensed medical professional.

**Health Information** means any information concerning an individual that would be considered "protected health information" or "electronic protected health information" within the Health Insurance Portability and Accountability Act of 1996 (as amended) (HIPAA) or the Health Information Technology for Economic and Clinical Health Act (HITECH Act), and their implementing regulations, or protected health-related information under any similar federal, state, local or foreign law.

**Identifying Information** means any information, regardless of how or where it is stored or what format it is in, that could potentially be used to distinguish or trace an individual's identity either alone or when combined with other personal or identifying information, including but not limited to a person's full name, date of birth, social security number, place of birth, government issued identification number, or biometric records.

**Inception Date** means the date and time stated in Item 3.(b) of the Declarations.

**Included Entity** means:

- a. the **Educational Organization**;
- b. any not-for-profit organization or entity over which the governing body of the **Educational Organization** exerts effective control and that is named in, and whose accounts are included with or consolidated into, the financial statements submitted to **us** most recently by the **Educational Organization** prior to the rating of the premium for the **Policy Period**; however, no entity or affiliate or subsidiary of any entity that has not qualified as a not-for-profit entity under applicable provisions of the Internal Revenue Code is an **Included Entity**, and no person or entity is an **Insured** with respect to such entity, unless that entity is listed on Schedule A;
- c. any entity listed on Schedule A of this Policy; and
- d. any not-for-profit entity acquired or formed by or merged with an **Included Entity** during the **Policy Period** provided that
  - (1) the value of the sum of all assets (including, but not limited to, real estate, securities, assumed indebtedness and other consideration) expended, assumed or exchanged for any such acquisition, formation or merger does not exceed 5% of the total assets of the **Educational Organization** and its consolidated subsidiaries and affiliates as most recently reported to **us** for rating purposes prior to such **Policy Period**;
  - (2) the combined or consolidated operations and the acquired, formed or merged entity are not materially different from those of the **Included Entity** prior to the acquisition, formation or merger;
  - (3) coverage with respect to that newly formed, acquired or merged entity will begin on the date of acquisition, formation or merger, and there is no coverage for any entity acquired by or merged into the **Included Entity** or for any person with respect to that entity for **Occurrences** happening prior to the date of acquisition or merger; and
- e. In addition to coverage provided in Item d. listed above, any newly formed, acquired or merged affiliates of the **Educational Organization**, shall be added as **Included Entities** to this Policy as of the effective date of their formation, incorporation or acquisition by the **Educational Organization**, provided
  - (1) they are reported to **us** within sixty (60) days of the date of their formation, incorporation or acquisition by the **Educational Organization** and

(2) are subsequently accepted for coverage by **us** and named on the Policy.

**Included Entity's Products** means goods or products manufactured, sold, tested, handled, or distributed by an **Included Entity** or others trading under its name or materials that were the subject of completed or abandoned operations of the **Included Entity**.

**Insured** means:

- a. the **Included Entities**;
- b. any past, present or future trustees, governing board directors or **Officers** of an **Included Entity** while acting within the scope of their duties on behalf of that **Included Entity**; the estates, heirs, legal representatives or assigns of deceased, incompetent, insolvent or bankrupt trustees, governing board directors, or **Officers**; and spouses or domestic partners of governing board directors or trustees to the extent they are involved in **Claims** solely because of their status as spouses or domestic partners;
- c. at the option of the **Educational Organization**, any
  - (1) past, present and future employee, member of the faculty, student teacher, or teaching assistant of an **Included Entity**;
  - (2) member of a committee, including an Institutional Review Board (as recognized by the U.S. Food and Drug Administration and U.S. Department of Health and Human Services) of an **Included Entity**, or a representative to an education association of which the **Educational Organization** is a member;
  - (3) uncompensated volunteer worker performing services on behalf and with the express direction and authority of an **Included Entity**;
  - (4) student of an **Educational Organization** while serving in a supervised internship program in satisfaction of course requirements; or
  - (5) student of an **Educational Organization** while acting at the direction of, complying with policies and procedures governing conduct at, or performing services primarily for or on behalf of, the **Educational Organization**;  
but only while acting within the scope of their duties or obligations in their respective capacities to an **Included Entity** as described in clause b. or c. above, and coverage for these individuals is subject always to all other terms and conditions of this Policy;
- d. any person legally responsible for the use of an **Automobile** owned, rented, leased, borrowed, hired or used by an **Included Entity** with its express permission; but **Insured** under this Paragraph d. does not include:
  - (1) any person or organization's (other than an **Included Entity's**) agent or employee, operating an **Automobile** repair shop, public garage, sales agency, service station, or public parking place, with respect to any **Occurrence** arising out of the operation thereof; or
  - (2) the owner or any permissive user of the owner of an **Automobile** that is not owned by an **Included Entity**; however, at the request of the **Educational Organization**, we will deem as an **Insured**
    - (i) an employee of an **Included Entity** for liability arising out of the use of his or her personal **Automobile** in the business of that **Included Entity** on behalf of and with the express permission of that **Included Entity**; or
    - (ii) any person who rents or leases **Automobiles** on behalf of and with the express permission of the **Included Entity**, but only while acting within the scope of their duties or obligations in their respective capacities to an **Included Entity**;
- e. except with respect to the use or operation of an **Automobile**, any person or organization to whom any **Included Entity** is obligated by virtue of a contract or agreement to provide liability insurance such as is afforded by this Policy, but only
  - (1) to the extent of such obligation;
  - (2) for operations (other than commercial insurance operations) by or on behalf of that **Included Entity** or operation of facilities of that **Included Entity** or use of facilities by that **Included Entity**; and
  - (3) if the contract or agreement is made prior to an covered **Occurrence**; and

- f. **Automobile** dealerships and leasing corporations that own **Automobiles** which are leased or loaned to an **Included Entity** but only for liability arising out of the activities of the **Included Entity's** employees.

**Limit of Liability** means the maximum amounts that are provided by this Policy to pay **Damages**, respectively, for each **Occurrence** and in the aggregate for all **Occurrences** during the **Policy Period** as stated in Items 2(a) and (b) of the Declarations.

**Medical Services** means any acts that may be legally performed only by a physician, nurse or other licensed medical professional performed within the scope of his/her medical license, regardless of whether the person is licensed or not. However, the application of **First Aid** shall not be considered **Medical Services**.

**Model aircraft** means a non-human carrying device capable of sustained flight in the atmosphere which has a flight weight of 100 pounds or less (flight weight includes the weight of the aircraft itself, fuel and other fluids, and all payload) used for research and/or educational purposes; but, model aircraft does not include any rocket or missile.

**Non-Employee Sexual Harassment** means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with performance by, or creating an intimidating, hostile, or offensive environment for a student or person other than an employee of an **Included Entity**.

**Non-Flight Curriculum-Related Instruction** includes the assembly, maintenance, service, ownership, use or operation of owned aircraft not used in flight, but instead solely for maintenance or service as part of **Non-Flight Curriculum-Related Instruction**; however **Non-Flight Curriculum-Related Instruction** does not include:

- (i) the flying of any aircraft,
- (ii) the time commencing with the take-off run or landing run of any aircraft or
- (iii) the assembly, maintenance, service, ownership, use or operation of any aircraft actually used in flight.

**Occurrence** means:

- a. an accident during the **Policy Period** or the continuous, intermittent or repeated exposure to conditions that commence during the **Policy Period** that causes **Bodily Injury** or **Property Damage** neither expected nor intended by the **Insured**; or
- b. an event that first occurs during the **Policy Period** that causes **Personal Injury** or **Advertising Injury**.

The use of reasonable force to protect persons or property shall be deemed "neither expected nor intended" within the meaning of a. above.

**Breach of contract is not an Occurrence.**

**Officer** means any corporate officer of an **Included Entity** whether or not an employee; and any president, chancellor, provost, treasurer, vice president, dean or other comparable senior administrator of any **Included Entity**.

**Outbreak** means a human illness caused by any virus or bacteria declared on or after 1/1/2021 as a:

- a. pandemic or epidemic by the World Health Organization or the Centers for Disease Control; or
- b. Public Health Emergency by the Secretary of the US Department of Health and Human Services or by a state government authority.

**Personal Injury** means injury resulting from

- a. false arrest, detention or imprisonment;
- b. malicious prosecution;
- c. wrongful entry into, or eviction of a person from, a room, dwelling or premises a person occupies;
- d. oral, written, video or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services (other than in any advertisement, publicity article, broadcast, telecast, or electronic or video publication that arises out of an **Included Entity's** advertising of its goods, products or services);
- e. violation of a person's right of privacy; or
- f. **Clerical or Administrative Error.**

**Policy Period** means the period from the first date and hour stated in Item 3 of the Declarations until the earlier of the last date and hour stated in Item 3 of the Declarations or the date and hour of cancellation of this Policy.

**Pollutant** means any solid, liquid, gaseous or thermal irritant, contaminant, toxic or hazardous substance or any substance which may, does, or is alleged to affect adversely the environment, property, persons or animals, including any Select Agents (as defined by the United States Department of Health and Human Services and the United States Department of Agriculture), fungi, spores, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Fungi includes, but is not limited to, any form or type of mold, mushroom, or mildew. Spores includes any reproductive body produced by or arising out of fungi. Waste includes materials to be recycled, reconditioned or reclaimed. However, no virus or bacteria is a **Pollutant** unless such virus or bacteria qualifies as a Select Agent and is used, stored, or maintained by an **Included Entity** for research purposes.

**Professional Services** means acts that may be legally performed only by a person holding a professional license, regardless of whether the person is licensed or not; or any services for which an **Insured** natural person is compensated by any party other than an **Included Entity**. However, the application of **First Aid** shall not be considered **Professional Services**.

**Property Damage** means physical injury to or destruction of tangible property (which does not include any **Digital Data**) of others including loss of use if the loss of use results from the physical injury or destruction of the tangible property, loss of use of tangible property of others that has not been physically injured or destroyed, and consequential damage or evacuation loss from actual or threatened physical injury or destruction of tangible property.

**Reporting Officer** means a position equivalent to any of the below of the **Educational Organization**:

- a. President, Chancellor or Head of School;
- b. Provost or Chief Academic Officer;
- c. VP of Finance, Chief Financial Officer, VP of Administration, or Chief Business Officer;
- d. VP of Legal Affairs or General Counsel;
- e. VP of Student Affairs;
- f. Athletic Director; or
- g. Director of any dispensary, clinic, infirmary, student health center, athletic facility, or similar facility, maintained by an **Included Entity** to provide medical, athletic training, psychological or mental health counseling services principally for use by the **Included Entity's** employees or students.

**Secure Data** means any:

- a. **Identifying Information,**
- b. **Financial Information,**
- c. **Health Information, or**
- d. **Digital Data.**

**Sexual Misconduct** means any actual or alleged **Non-Employee Sexual Harassment, Child Molestation**, or any other sexual assault, sexual abuse, or wrongful sexual conduct.

**Student Discipline Process** means the policy, practice or procedure of training, response, investigation, handling, resolution or adjudication of allegations of **Sexual Misconduct**, regardless of whether it is handled in a formal Title IX process.

**Traumatic Brain Injury** means any of the following:

- a. a concussion or sub-concussive brain injury or brain trauma;
- b. a reaction by the brain to a bump, blow or jolt to the head or body that is transmitted to the head; or
- c. any brain injury or brain trauma which results, either immediately or later in time, in changes in behavior, thinking, and/or physical or cognitive functioning.

**Ultimate Net Loss** means the total sum that the **Insured** shall be obligated to pay in respect of any single **Occurrence** for **Damages**.

**Underlying Insurance** means formal or informal instruments or risk transfer mechanisms including trusts or captives; or risk transfer mechanisms that name the **Insured** as "additional insured."

**Underlying Limit Retention** means the amount stated in Item 4. of the Declarations. This amount applies separately and always to each **Occurrence** covered by this Policy whether or not **Underlying Insurance** is available to the **Insured** to cover the **Underlying Limit Retention** amount. The **Underlying Limit Retention** amount shall be satisfied with respect to an **Occurrence** when the amount stated in Item 4. of the Declarations is exceeded by

- a. **Damages** other than **Defense Costs**, when **Defense Costs** are outside the liability limits of the **Underlying Insurance**; or
- b. **Damages**, if **Defense Costs** are within the liability limits of **Underlying Insurance** or if no **Underlying Insurance** applies to that **Occurrence**.

**Watercraft** means any ship or vessel intended to be operated on or beneath the water whether or not self-propelled.

**Wrongful Employment Practices** means wrongful acts against or wrongful treatment of an employee, former employee or applicant for employment by an **Included Entity** in its capacity as employer or by any person for whose conduct or misconduct the **Included Entity** is liable, including wrongful failure to hire, retain or promote; wrongful discrimination in the terms or conditions of employment, including sexual harassment; wrongful demotion, termination of employment, or discipline; failure to grant due process; the granting or removal of tenure; defamation or retaliation.

## LIMIT OF LIABILITY AND AGGREGATION

3. Irrespective of the number of policy periods or geographical area over which alleged or actual injuries or damages arise; the number of alleged or actual injuries or damages, the number of persons who sustain alleged or actual injuries or damages, or the number of **Claims** made or suits brought against one or more **Insureds**, on account of one or more **Occurrences**, our liability for all **Damages** is limited to the amount stated in item 2.(a) of Declarations for each **Occurrence** covered by this Policy, and the amount stated in item 2.(b) of the Declarations in the aggregate for all **Occurrences** covered by this Policy.

All **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** attributable directly or indirectly to the same accident, event, cause, defect or hazard, or failure to warn of such, or to the same or similar conditions, shall be deemed to constitute one single **Occurrence**, irrespective of the policy periods or geographical area over which alleged or actual injuries or damages arise, the



number of alleged or actual injuries or damages sustained, the number of persons who sustain alleged or actual injuries or damages, or the number of **Claims** made against one or more **Insureds**.

In addition to the above, for all **Occurrences** arising out of or related to:

**a. Included Entity's Products**

Any alleged or actual injuries or damages that are directly or indirectly attributable to the design, formulation, manufacture, distribution, use, operation, maintenance or repair of an **Included Entity's Products** or the failure to warn as to its use, operation or maintenance shall be deemed to constitute one single **Occurrence**, irrespective of the number of policy periods or geographical area over which alleged or actual injuries or damages arise; the number of such alleged or actual injuries or damages sustained; the number of persons who sustain alleged or actual injuries or damages; or the number of **Claims** made against one or more **Insureds**.

**b. Athletic Traumatic Brain Injury**

The following circumstances listed below which in any way cause, result in, and/or are related or connected to **Athletic Traumatic Brain Injury**, including any related **Medical Services**, shall collectively be grouped together and deemed to constitute one single **Occurrence**, irrespective of the number of policy periods or geographical area over which alleged or actual injuries or damages arise, the number of such alleged or actual injuries or damages sustained, the number of persons who sustain alleged or actual injuries or damage, or the number of **Claims** made against one or more **Insureds**:

- (1) any and all related accidents during the **Policy Period**;
- (2) the continuous, intermittent or repeated exposures to the same or similar conditions that commence during the **Policy Period**; or
- (3) formal or informal policies, practices, procedures or courses of conduct that commence during the **Policy Period**.

4. a. Solely with respect to the Exceptions to Exclusions 11.e. and 11.o. of this Policy, all **Claims** arising out of:

- (1) the same accident, event, cause, defect or hazard, actor, or actual or alleged wrongdoer; or the failure to warn of such; or
- (2) the same or similar conditions,

shall be deemed to constitute one single **Claim** first made when the earliest of such **Claims** is made against any **Insured**, irrespective of the number of policy periods or geographical area over which the alleged or actual injuries or damages occur, the number of policy periods over which the **Claims** are made, the number of policies issued by us to the **Educational Organization** during which the **Claims** are made, the number of alleged or actual injuries or damages sustained, the number of persons who sustain alleged or actual injuries or damages, or the number of **Claims** made against one or more **Insureds**.

b. We shall have no further obligation after the Annual Aggregate **Limit of Liability** has been exhausted.

## DEFENSE AND SETTLEMENT

5. We will pay **Damages** on behalf of an **Insured** as soon as practicable after
  - a. the **Insured's** liability has been established by judgment after actual trial or by written agreement to which we have consented; and
  - b. it has been determined that the **Ultimate Net Loss** as a result of the **Occurrence** in question exceeds the **Underlying Limit Retention** amount.

6. a. **We** have no duty to defend any **Insured** and **we** shall not be called upon to assume charge of the investigation, settlement or defense of any suit brought or legal proceedings instituted against any **Insured**, but **we** shall have the right and be given the opportunity;
    - (1) to approve in advance counsel selected by an **Insured** (which **we** will not unreasonably withhold or delay) and to require the **Insured** to revoke that counsel's appointment; and
    - (2) to be associated at **our** own expense with the **Insured** or the **Insured's** underlying insurers, or both, in the defense and control of **Claims**, or the trial of any suits or other legal proceedings, relative to any **Occurrence** that, in **our** opinion, may create liability for **us** under the terms of this Policy, in which event the **Insured** shall cooperate with **us** in all things in the defense of that **Claim**; or
    - (3) at **our** sole option, to take over the defense of any **Claim**.
  - b. For any **Occurrence** or **Claim** reported to **us** according to Paragraph 12 of this Policy, the **Insureds** must cooperate with **us** and with any claims administrator **we** designate in the investigation, defense or settlement of **Claims**.
  - c. In the event the **Insured** or the **Insured's** underlying insurers elect not to appeal a judgment in excess of the **Underlying Limit Retention** amount, **we** may appeal (including disbursements and interest on judgments incidental to the appeal), but in no event shall **our** liability exceed the **Limit of Liability** of this Policy including the cost of such appeal.
7. The **Educational Organization**, with **our** prior approval, shall engage an independent Claims Administrator to investigate accidents, incidents and **Occurrences**, to pay **Claims**, and to set reserves on open **Claims**. The expense of the Claims Administrator shall be borne by the **Educational Organization** uninsured and shall not be included in the **Defense Costs** or count toward the **Underlying Limit Retention** amount applicable to each **Occurrence**.
  8. The **Insureds** shall immediately notify **us** of any settlement demand, and no settlement offer shall be made or settlement agreed to by an **Insured** without **our** prior consent (which **we** will not unreasonably withhold or delay), other than a settlement for which no payment for **Damages** is sought by the **Insureds** under this Policy.
  9. If the **Insureds** shall refuse to consent to a reasonable settlement **we** recommend that is acceptable to the claimant and if the **Insureds** shall elect thereafter to contest any **Claim** or continue any legal proceedings in connection with that **Claim**, then **our** liability for **Damages** in respect of that **Claim** shall not exceed the amount for which it could have been settled including **Defense Costs** incurred up to the date of such refusal.
  10. If a single **Claim** involves both covered and uncovered elements, the **Insureds** and **we** agree to use best efforts to determine a fair and proper allocation of **Damages** based upon each **Insured** and **our** relative legal exposure with respect to the covered and non-covered elements of the **Claim**. **We** will be obligated to pay only that portion of **Damages** allocated to covered elements of **Claims** against **Insureds**. If the **Insureds** and **we** are unable to agree upon an allocation, **we** shall advance that portion of **Damages** which the parties agree is not in dispute until a different allocation is negotiated or judicially determined.

## EXCLUSIONS

11. This Policy does not apply to:
  - a. any obligation for which any **Insured** or any company as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law or the Longshoremen's and Harbor Workers' Compensation Act, or any similar law;
  - b. **Wrongful Employment Practices**;
  - c. **Personal Injury or Advertising Injury**
    - (1) resulting from an act by or at the direction of any **Insured** if performed with the knowledge that such act would cause injury; or
    - (2) arising out of the oral or written publication of material
      - (i) first published prior to the beginning of the **Policy Period**; or

(ii) by or at the direction of the **Insured** with knowledge of its falsity

d. **Advertising Injury** arising out of

- (1) breach of contract;
- (2) the failure of goods, products or services to conform to advertised quality or performance; or
- (3) incorrect description or mistake in advertised price

**Exception:** Item (1) of this exclusion does not apply to misappropriation of advertising ideas under an implied contract;

e. any liability arising out of rendering or failure to render any **Professional Services**;

**Exception:** This exclusion shall not apply to:

1. the liability of an **Insured** caused by a student intern while participating in any paid and supervised practicum, field work experience, or internship program; however, this Exception shall not apply to internships that may be legally performed only by a person holding a professional license, regardless of whether the student is licensed or not; or
2. the liability of the **Educational Organization** and its employed **Insureds** from **Claims** first made against any **Insured** during the **Policy Period** for an **Occurrence** on or after the **Inception Date** arising out of rendering or failure to render any health care services by a person who is employed or contracted by the **Educational Organization** as a registered nurse, licensed practical nurse, licensed or certified athletic trainer, counselor, psychologist, physician's assistant, nurse practitioner or other allied health personnel, other than a physician or dentist, but only if the services are provided at
  - (i) a dispensary, clinic, infirmary, student health center, athletic facility, or other similar facility maintained by the **Included Entity** principally for use by the **Included Entity's** employees or students, or
  - (ii) other incidental locations that are not medical facilities in the event of a medical emergency; and
  - (iii) the coverage afforded by this Exception to this Exclusion 11.e. does not extend to liability assumed by any **Insured** in any contract or agreement except for liability that the **Insured** would have in the absence of the contract or agreement;

f. any **Property Damage** to property owned, occupied or rented by, or within the care, custody or control of, any **Insured**;

g. any liability related to or arising out of or in any way involving any actual or alleged **Sexual Misconduct**, irrespective of the legal theory alleged, including but not limited to:

- (1) training, response, investigation, handling, resolution, or adjudication of allegations of **Sexual Misconduct**;
- (2) training, retention, or supervision of any actual or alleged perpetrator of **Sexual Misconduct**; and
- (3) any **Student Discipline Process**;

h. any liability arising out of the design, manufacture, assembly, maintenance, sale, service, ownership or operation of any **Watercraft**;

**Exception:** This exclusion shall not apply to

- (1) non-submersible **Watercraft** up to 50 feet in length;
- (2) rowing or sculling shells regardless of length;
- (3) **Watercraft** listed on Schedule B attached to this Policy;
- (4) **Watercraft** chartered with crew for a period up to twelve hours on a U.S. Coast Guard-approved and commercially-licensed vessel operated in U.S. waters, but this limited extension of coverage does not apply to any **Claim** relating to liability of others assumed by an **Insured** or any **Claim** by or on behalf of, or against, an owner, operator or crew member of any **Watercraft** or to any relative or estate of such owner, operator or crew member; or
- (5) loading or unloading of any **Watercraft** or **Watercraft** ashore, if at premises owned, leased, or controlled by an **Included Entity**;

i. any liability arising out of the design, manufacture, assembly, maintenance, sale, service, ownership, lease, use or operation of any aircraft, including the use of parachutes or parasailing equipment from any aircraft, hang gliding, or any "lighter than air" craft or manned balloon;

**Exception:** This exclusion does not apply to:

- (i) the use of non-owned regularly-scheduled commercial airlines by an **Insured**, operating within, originating from, or returning to the United States;
  - (ii) **Model Aircraft**;
  - (iii) a lighter-than-air craft that is an unmanned balloon; or
  - (iv) **Non-Flight Curriculum-Related Instruction**;
- j. any liability directly or indirectly resulting from war, invasion, hostile action of foreign enemies, civil war, rebellion, revolution, insurrection, military or usurped power; or confiscation, nationalization, requisition, destruction of, or damage to property by or under the order of any government or public or local authority;

**Exception:** This exclusion shall not apply to any events or conditions occurring in the United States of America, its territories or possessions or Canada;

- k. any liability arising out of, related to, or in any way involving asbestos or lead in any form;
- l. any liability arising out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration, growth or escape of **Pollutants** into or upon land, the interior of buildings, any enclosed space or any other real estate; into the atmosphere, or into any watercourse or body of water, whether above or below ground or otherwise into the environment; or any direction, demand or request, whether governmental or other, that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

**Exception:** Subject always to the conditions in Paragraph (2) below, **we** will not apply this exclusion to

- (1) **Bodily Injury or Property Damage** to the property of others that is solely the result of:
  - (a) fire that breaks out from where it was intended to be including any consequential smoke damage;
  - (b) collision or overturning of an **Automobile**;
  - (c) explosion or lightning;
  - (d) the accidental upset, dropping, falling, breaking, spilling, splashing or rupture of any above-ground container of **Pollutants**;
  - (e) faulty heating or cooling equipment;
  - (f) application of pesticides, herbicides or swimming pool chemicals on or at a premises of an **Included Entity** by its employees who are properly licensed or certified by a federal or state agency to apply those pesticides, herbicides or chemicals; or
  - (g) a single or intermittent above-ground discharge, dispersal, release, or escape of **Pollutants** that commences during the **Policy Period** and ceases within seven (7) days of its commencement;
- (2) The limited coverage provided by the exceptions to this exclusion in Paragraph (1) above is at all times subject to and limited by these conditions:
  - (a) the exceptions only apply if the injury or damage is discovered or becomes known to the **Insured** within fourteen (14) days and reported to **us** in writing within sixty (60) days of the accident, fire, collision or overturning, explosion or lightning, or commencement of any discharge, dispersal, release, seepage, migration, growth or escape of **Pollutants**; and
  - (b) **we** will not pay any loss, cost or expense of
    - (i) evaluating, testing for, monitoring, cleaning up, removing, controlling, containing, treating, detoxifying and/or neutralizing the discharge, dispersal, release, seepage, migration, growth or escape of any **Pollutant** on property at any time owned, leased or rented by an **Insured** and/or under the control of any **Insured**; or
    - (ii) **Property Damage** to any aquifer or underground watercourse or well, or any **Property Damage** directly or indirectly arising out of underground or underwater operations of any **Insured**; and
  - (c) **our** liability is limited to that portion of **Damages** directly attributable to or caused by an **Insured's** own negligence and **we** will not pay or share in any liability of others resulting from **Pollutants** for which an **Insured** is held jointly and/or severally liable (whether under the Comprehensive Environmental Response Compensation & Liability Act or any other statute or any judgment of any court) for **Bodily Injuries** and/or **Property Damages** caused in fact by parties other than an **Insured**; and

- (d) any discharge, dispersal, release, seepage, migration, growth or escape of **Pollutants** shall be deemed to have "commenced" at the time of the first event in any series, chain or combination of related events resulting in any discharge, dispersal, release, seepage, migration, growth or escape of **Pollutants**, and all subsequent, sequential, contributing or combined discharges, dispersals, releases, seepages, migrations, growths or escapes, no matter when occurring, shall be deemed to have "commenced" at the time of that first event; and
- (e) the burden of proof that any **Occurrence** meets the conditions of coverage in this Paragraph (2) lies with the **Insureds**;
- m. any liability resulting from the hazardous properties of radioactive or nuclear material (including *source material*, *special nuclear material* and *by-product material* as those terms are defined in the Atomic Energy Act of 1954 and amendments thereto);
  - Exception:** While in all instances applying to nuclear material (including *source material*, *special nuclear material* and *by-product material* as those terms are defined in the Atomic Energy Act of 1954 any amendments thereto), this exclusion shall not apply to any other radioactive material used by an **Included Entity** for medical or research purposes;
- n. any liability arising out of any diminished value or economic utility of the **Included Entity's Products** or work completed by or on behalf of the **Included Entity** if such diminished value or economic utility resulted from the failure of an **Included Entity's Products** or work completed by or on behalf of the **Included Entity** to meet any warranty or representation as to the level of performance, quality, fitness, or durability, or to perform the function or serve the purpose intended;
- o. any liability arising out of the administration of any employee benefit plan or any violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act (ERISA) or any similar statute, regulation, ordinance, order or edict of any jurisdiction or political subdivision (whether or not in the United States);
  - Exception:** This exclusion shall not apply to **Clerical or Administrative Error** with respect to a **Covered Benefit Plan** that occurs entirely after the **EBL Date of First Coverage** and for which a **Claim** is first made against an **Insured** during the **Policy Period**, and our liability for all **Damages** to which this exception applies arising out of all **Claims** first made during the **Policy Period** is limited to \$1,000,000, which amount is part of and not in addition to the **Limit of Liability** of this Policy; however, this exception shall not apply to any liability arising out of
    - (1) unlawful discrimination;
    - (2) any **Occurrence** that is otherwise covered by this Policy apart from this exception;
    - (3) the failure of any insurer, health maintenance organization, preferred provider organization or third party claims administrator to pay or provide benefits; or
    - (4) the failure of any compensation, investment, stock or savings plan or program to perform as anticipated, projected or represented;
- p. (i) any liability related to or arising out of the actual or threatened alteration, appropriation, destruction, dissemination, duplication, imitation, impairment, loss of use, misuse, release, reproduction, theft or unauthorized encryption through ransomware of **Secure Data**; or  
(ii) any actual or alleged failure to comply with the provisions of any federal, state, local or foreign statute or regulation that requires an entity collecting or storing information that constitutes **Secure Data**, or any entity that has provided information that constitutes **Secure Data** to a third party, to provide notice of any actual or potential unauthorized access by others to such **Secure Data**;
- q. any liability caused by or resulting from any unauthorized use, access to, or failure or violation of any **Computer System** or any other device or instrument used in the communication, receipt, or transmission of electronic data;
  - Exception:** This exclusion shall not apply to **Bodily Injury** or physical injury to or destruction of tangible property (which does not include any **Digital Data**) of others and its resulting consequential damages;
- r. the liability of any person who committed, or is alleged to have committed, physical assault; provided, however, that if after a final civil adjudication it is determined that such accused person did not commit physical assault, we will reimburse **Defense Costs** for that person;
- s. any liability related to or arising out of, or in any way involving any **Outbreak**; or
- t. any liability related to or arising out of, or in any way involving COVID-19 or any sub-strains or mutations thereof.

## NOTICE OF OCCURRENCE OR CLAIM

12. As a condition precedent to the rights of any **Insured** under this Policy, if a **Claim** reasonably likely to involve this Policy is made against an **Insured** or, except as otherwise provided in Exclusion 11.I.(2)(a), if any employee of the risk management department, or any **Reporting Officer** or legal counsel of any **Included Entity** becomes aware of an:
- (a) **Occurrence** reasonably likely to involve this Policy, or
  - (b) regardless of the **Insured's** opinion of whether this Policy is likely to be involved, an **Occurrence** or **Claim** involving any of the following:
    - (1) fatality;
    - (2) major paralytic conditions such as paraplegia and quadriplegia;
    - (3) second or third degree burns to 25% or more of the body;
    - (4) amputation, permanent loss of use or permanent loss of sensation of a major extremity;
    - (5) head or brain injuries resulting in coma, behavioral disorders, personality changes, seizures, aphasia or permanent disorientation;
    - (6) loss of sight in one or both eyes or loss of hearing;
    - (7) injury resulting in incontinence of bowel or bladder; or
    - (8) **Bodily Injury** resulting from health care services provided in a clinic, infirmary, student health center, treatment room or other similar facility that provides medical or health services to students or at other locations in the event of a medical emergency;

The **Insured** must:

- (a) notify **us** as soon as practicable in writing;
- (b) provide particulars sufficient to identify the **Insured**, person, persons or organizations involved in the **Occurrence**, and also such reasonably detail information as **we** may request;
- (c) promptly forward to **us** any written demand, notice, summons, complaint, or other process of service received by the **Insured** or its representatives; and
- (d) cooperate with **us** and with any claims administrator **we** designate in the investigation, defense or settlement of **Claims**.

13. Notice to the Company shall be in writing delivered to **us** at 7700 Wisconsin Ave, Suite 500, Bethesda MD 20814-3556, Fax (301) 907-0303 or at [newclaims@ue.org](mailto:newclaims@ue.org) or through [www.ue.org](http://www.ue.org). If a **Claim** is submitted electronically, **we** will send an electronic confirmation.

## CANCELLATION AND NONRENEWAL

14. The **Educational Organization** may cancel this Policy for all **Insureds** by surrendering it to **us** or by written notice to **us** by certified mail at the address in Paragraph 13 stating when not less than 10 days thereafter the cancellation shall be effective. **We** may cancel this Policy only in the event that any payment of premium is not made when due and payable by mailing written notice by certified mail to the **Educational Organization** at the last mailing address known by **us** stating when, not less than 10 days thereafter, such cancellation shall be effective.
15. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. If the **Educational Organization** cancels this Policy, earned premium shall be calculated in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
16. If **we** elect not to renew coverage provided by this Policy at then current standard terms and conditions (a change or increase in premium is not a change of terms and conditions) at the end of the **Policy Period**, **we** shall give the **Educational Organization** written notice at least 60 days before the end of the **Policy Period**.

- a. In the event that **we** learn of a change in the insurability of the risk that **we** deem material within 60 days or less before the end of this Policy and **we** are not then willing to renew at the current standard terms and conditions, **we** will notify the **Educational Organization** of this determination as soon as practicable, and **we** will also advise the **Educational Organization** whether **we** are willing to renew on different terms and conditions before the end of this **Policy Period**.
- b. Under such circumstances, **we** may but are not required to offer the **Educational Organization** the opportunity to purchase a 60-day extension to the expiring Policy. Although this accommodation by **us** would be meant to give the **Educational Organization** that purchases a 60-day extension additional time to make decisions, this extension of the **Policy Period** shall under no circumstances create any additional Policy limits or increase the **Limits of Liability** available to the **Insureds**.

If offered by **us**, the **Educational Organization** may exercise this option by electing in writing before the end of the current **Policy Period** to pay to **us** an additional prorated portion of the current Policy's premium. Payment of the additional premium must be made no later than 10 days following the end of the original **Policy Period**.

## GOVERNING LAW AND INTERPRETATION

17. This Policy shall be governed by and construed in accordance with the internal laws of the State of New York, except insofar as such laws may prohibit payment in respect of punitive damages; however, the provisions, stipulations, exclusions and conditions of the Policy are to be construed in an evenhanded fashion between the **Insureds** and **us**. Where the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions, stipulations, exclusions and conditions without regard to authorship of the language and without any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or **us**.

## DISPUTE RESOLUTION

18. Any and all disputes arising out of or related to this agreement or the parties' performance hereunder shall be submitted to mediation before a mutually-acceptable mediator prior to initiation of arbitration, litigation or any other binding or adjudicative dispute resolution process. The parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the parties.

## COMPLIANCE WITH APPLICABLE UNITED STATES SANCTIONS

19. This insurance does not apply when **we** are prohibited from providing insurance by virtue of any United States laws or regulations.

## CURRENCY

20. All premiums, **Limit of Liability**, **Underlying Limit Retention**, **Ultimate Net Loss**, and all other monetary amounts used in this Policy are expressed and payable in United States currency.

## REPRESENTATION

21. Except as respects the giving of notice of **Occurrence** or **Claim** pursuant to Paragraphs 11.I. (2)(a) and 12, by acceptance of this Policy the **Educational Organization** agrees to act on behalf of all **Insureds** with respect to all matters under this Policy, including, without limitation, payment of premium, negotiation of the terms of renewal, resolution of disputes, the giving and receiving of notice of

cancellation, the giving of notice to persons whom the **Educational Organization** chooses to not make an **Insured**, and the receiving of any return premiums that may become due.

22. In the event there is a dispute among **Insureds** as to allocation of the proceeds of this Policy among any of them or on their behalf, **we** may pay such proceeds to the **Educational Organization**, which agrees to accept such proceeds and to assume responsibility for its allocation among the **Insureds** or on their behalf, and **we** shall be discharged from any further responsibility or liability hereunder or otherwise with respect to such proceeds. The **Insureds** agree that the **Educational Organization** shall so act on their behalf. Notice by certified mail to the **Educational Organization** at the last mailing address known by **us** shall constitute notice to all **Insureds**.

#### **SUBROGATION**

23. In the event of any payment under this Policy, **we** shall be subrogated to all the **Insureds'** rights of recovery against any person or organization and the **Insureds** shall execute and deliver such instruments and papers and do whatever else is necessary to secure such rights and shall do nothing after an **Occurrence** to prejudice such rights. **We** agree to waive any right of recovery **we** may have against any person or organization when the **Educational Organization** has agreed to such waiver prior to an **Occurrence**.

#### **ALTERATION AND ASSIGNMENT**

24. No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy that is signed by **our** authorized representative.

#### **INSPECTION**

25. **We** shall be permitted but **we** are not obligated to inspect an **Included Entity's** property and operations at any time. Neither **our** right to make inspections nor the making thereof nor a report thereon shall constitute an undertaking on behalf of or for the benefit of any **Insured** or others to determine or warrant that such property or operations are safe or are in compliance with any law, rule or regulation.

#### **OTHER INSURANCE**

26. This Policy shall at all times be excess over the greater of the **Underlying Limit Retention** amount, or the amount of any other insurance available to the **Insured** covering an **Occurrence** covered by this Policy (other than insurance that is expressly and specifically excess of the limits of this Policy), and nothing in this Policy or in any other policy shall be construed to require this Policy to contribute with, or subject this Policy to the terms, conditions or limits of, such other insurance.

In addition, this Policy shall always be excess over any other insurance that names any **Insured** as an "additional insured:"

- a. if such insurance is also written on an excess basis, **we** agree with the **Insured** that this Policy is excess over such insurance; and,
- b. **we** shall not share in paying **Ultimate Net Loss** with that other insurance on any basis including but not limited to the ratio of the **Limit of Liability** of this Policy and the limit of liability of the policy providing "additional insured" coverage.

#### **BANKRUPTCY**

27. Bankruptcy, insolvency, or receivership of the **Insured** or any insurer, or the **Insured's** inability to pay any **Underlying Limit Retention** amount, will not relieve **us** of **our** obligations under this Policy; however, this Policy shall not drop down as a result of such bankruptcy, insolvency, receivership or inability, or apply as a replacement of any self-insured retention amount or any **Underlying Insurance** and **our Limits of Liability** shall apply only in excess of the required **Underlying Limit Retention** amounts.



#### OPTIONAL EXTENDED DISCOVERY PERIOD

28. If this Policy is not renewed, the **Educational Organization** shall have the right to an **Extended Discovery Period** for the coverage granted by the exception to Exclusion 11.e. of this Policy.

The right to an endorsement providing an **Extended Discovery Period** must be exercised by notice to **us** in writing and by payment of such additional premium as **we** may require (not to exceed 25% of the annual premium for this Policy) and be received by **us** within 30 days following the end of the **Policy Period**. The additional premium will be considered fully earned on the first day of the **Extended Discovery Period**.

#### UNINTENDED ERRORS OR OMISSIONS

29. Unless information is subject to a specific supplementary warranty application required by **us**, the failure of the **Insureds** to properly disclose all application information at the time of application for coverage for this Policy shall not prejudice the **Insureds** with respect to this insurance, provided such failure or omission is not intentional.

#### HEADINGS

30. The descriptions in the headings and subheadings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions of this Policy.

**IN WITNESS WHEREOF**, United Educators Insurance, a Reciprocal Risk Retention Group, Inc. has caused this Policy to be signed by its President.

**SPECIMEN**

President